IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2109 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER RESOURCES DEVELOPMENT CORPP EMPLOYEES ASSON

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioners

M/S PATEL ADVOCATES for Respondent No. 1

MR PARESH UPADHYAY for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/03/2001

C.A.V. JUDGEMENT

#. Heard the learned counsel for the parties.

#. This petition has been filed by the Gujarat Water

Resources Development Corporation Employees' Association, through its President. The second petitioner is its Organising Secretary.

#. In the service matters in each and every case, the petition by Employees' Association is difficult to consider. In service matters, only individual's matter has to be decided on its own facts. It is difficult to accept that the matter of all the employees may be identical both on facts and law. In this petition, the petitioners prayed for declaration that the action of the respondents in not finalising the pension cases of the employees of the Corporation till date of their retirement or after retirement is being illegal, arbitrary and violative of Article 14 and 16 of the Constitution. Second prayer has been made for direction to the respondents, their officers, servant and agents to finalise the pension matter of employees of the Gujarat Water Resources Development Corporation. Then the prayer has been made for grant of interim relief and I find from the record that this court has not granted any interim relief in favour of the petitioners. The respondents in this petition are the State of Gujarat through the Secretary, Irrigation Department, Gandhinagar and second is Managing Director, Gujarat Water Resources Development Corporation Ltd. Gandhinagar. From this prayer I find that this petition has been filed for the members of the association but who are the beneficiaries of this petition, I am constrained to observe that, the same has not been mentioned. List of those persons, meaning thereby, the members of the petitioner-Association and employees of the Corporation have not been given whose pension cases are not being finalised. In the pension matters, an individual has to approach with its own facts and the Court may be in a better position to decide the same. This petition on behalf of the Association without giving details of its members, employees etc. is very difficult to appreciate. Be that as it may.

#. The respondent No.2 has filed the affidavit and therefrom I find that so far as the workers/employees are concerned, it is the case of the Corporation that the Government has made it clear that on their transfer to the Corporation they shall not be entitled to any right to exercise option and their services are liable to compulsorily absorbed with the Corporation. Rejoinder to the reply has not been filed by the petitioners, meaning thereby, the statements made in the reply stands uncontroverted. It has next been stated that the employees who have retired from the

respondent-Corporation i.e who are employed on work-charge basis at the time of en bloc transfer to the respondent-Corporation have not been treated as Government servant during the period when they rendered their services in the respondent-Corporation. This is because those employees have been compulsorily absorbed in the respondent-Corporation at the time of their en-bloc transfer and hence the pension papers regarding those work charge employees have been prepared looking to their services rendered in the State Government as well as in the Directorate of Ground Water Investigation. It is further stated in the reply that the respondent-Corporation has already prepared pension papers of employees who have been retired from the Corporation and have been sent to the parent department of those employees. So far as the post retirement benefits of the retired employees is concerned, it is stated that the respondent-Corporation is having Contributory Provident Fund Scheme under "Gujarat Water Resources Development Corporation Limited Employees' Provident Fund Rules, 1976". Under the said scheme, the Corporation is regularly deducting the employees' contribution as well as employer's contribution and the same are being deposited with the Fund. A statement of fact has been made that the Corporation has already made necessary payments and the amount of provident fund due to the retired employees from the Corporation. Re. gratuity, it is the case of the Corporation that necessary payment of the amount of gratuity has also been made to the retired employees. In reply, it is stated that so far as the grievance of the petitioners who have retired from the Corporation is concerned, , the liability and obligation of the Corporation have already been discharged and hence the grievance of the petitioners as prayed for in the petition does not survive. This reply has been filed by the respondents on 5-7-1988 and rejoinder thereto has not been filed by the petitioners, as stated earlier. During this period of twelve years, what subsequent developments have taken place have also not been brought on the record by the petitioners. In service matters, it is the duty of the petitioners to bring all the subsequent developments which have taken place during the pendency of the petition on the record. In view of the reply of the Corporation, it was also obligatory on the part of the petitioners to bring on record now what grievance of the employees survive in the matter of pension and other retirementary benefits. That has also not been done.

#. In reply, the Corporation has taken the plea re. locus standi of the petitioner-Association to file the

petition. Reference here may have to para-3.8 of the reply. It is stated that the petitioner-Association has no locus-standi to file the present petition on behalf of the employees who are alleged to be the members of the said Association in view of the fact that the registration of the Association has already been cancelled. Naturally, when registration of the association is cancelled, the respondent is correct to contend that it has no locus standi to file the petition. Be that as it may. Otherwise also, in view of the reply of the Corporation, the facts stated therein have also not been controverted by the petitioners, it is the duty of the petitioners to state what grievance of theirs now remain.

#. The Association has filed the petition for the benefit of undisclosed members. Any decision given in this petition may not be binding on those undisclosed members for whose benefit this petition has been filed and as such, this is a risk to give any final decision in the matter. After giving decision, if the decision given is adverse to the petitioners naturally those employees who are not party to this petition and in this petition their names have not been given certainly they can come before this Court. Possibly to avoid further litigation, this petition would have been filed but that purpose will not be served. The decision given in the petition may not be binding on the members of the association as section 18 of the ID Act, 1947 may not be applicable in the matter. That is another risk of entertaining the petition filed by the Association.

#. There is yet another aspect to be examined. Under Article 226 of the Constitution of India, this Court can only enforce the fundamental rights of the citizen or their any legal right. None of the legal or fundamental right of the Association is infringed. It may be a representation in representative capacity but looking to the fact that the names of those persons for whose benefit it has been filed have not been disclosed, it cannot be taken to be a petition in representative capacity.

#. Taking into consideration all the facts of this case, this petition has no merits and no relief of the nature as prayed for can be granted. Otherwise also, how such a relief can be granted when the petitioners have not disclosed the names of those persons for whose benefit this petition has been filed.

#. In the result, this petition fails and the same is

dismissed. Rule discharged Interim relief, if any, granted stands vacated. No order as to costs. However, the dismissal of this petition will not come in the way of the employees to approach to this Court by sending a simple letter paying thereon the requisite court fees as prescribed for the special civil application if they are entitled for pension and other retirementary benefits and if the same are not given to them by the respondents.

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